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ALEXANDER L. STEVAS
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NO. 80-1795

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1980

IN THE MATTER OF 18.86 ACRES OF REAL PROPERTY, NOW KNOWN AS LOT 35, BLOCK 57, SECTION 19, LOCATED IN PITTSGROVE TOWNSHIP, SALEM COUNTY, AND FORMERLY OWNED BY CHARLES NEWELL ATKINSON, LEGATEE BY WILL OF PHEBE ATKINSON, DECEASED 1918

APPEAL FROM THE SUPRME COURT OF NEW JERSEY

# BRIEF IN OPPOSITION TO MOTION TO DISMISS FILED BY PITTSGROVE TOWNSHIP

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BRIEF OPPOSING MOTION TO DISMISS FILED
BY PITTSGROVE TOWNSHIP

It was Pittsgrove Township Solicitor Orvyl Schalick who in 1950 (now a retired Superior Court judge) decided appellant would not be notified of land assessment and the placing of it on the tax roll pursuant to the enactment of two laws; the IN REM TAX FORECLOSURE ACT (1948) and EXEMPT PROPERTY WHICH CEASES TO BE EXEMPT (1949). It was Pittsgrove Township officials Arthur Schalick, tax assessor (a brother of Orvyl Schalick) and Everett M. Hitchner, tax collector (both now deceased) who in 1958 executed a fraudulent Tax Sale Certificate charging appellant with delinquency in taxes in the amount of $85.34 when both individuals knew appellant personally and that he was a resident of Washington, D.C. This fraudulent Certificate was the basis in 1962 for the tax foreclosure judgment. It was the Pittsgrove Township Solicitor George Friedman who in 1962 prepared a

tax foreclosure complaint, inserting therein as an afterthought "owner unknown". Was this insertion of "owner unknown" added at the suggestion of Judge Frank Kingfield, the north Jersey Chancery judge (a judge not assigned to Salem County Chancery Div.) who entered the judgment in Trenton? Is it not possible that Judge Kingfield insisted that "owner unknown" be inserted to assure his signing of the judgment in Trenton might be justified? A judge from outside the jurisdiction disposing of land by tax foreclosure could certainly salve his conscience if he knew, or had been falsely led to believe by Township officials, that the owner was unknown. Judge Joseph Narrow in Salem had all this information which appellant has been forced to dig up bit by bit when he dismissed appellant's tort action on the basis of a 6-year statute of limitations thus denying the right of a jury trial. This dismissal of tort action has been the basis for dismissal of two succeeding cases -

Atkinson vs. Pittsgrove Township et al.,
Docket No. 77-0562
A U.S. District Court suit challenging the notice provisions of the In Rem Tax Foreclosure Act as unconstitutional.

The instant case - IN THE MATTER OF 18.86 ACRES OF REAL PROPERTY ETC.
A Chancery Div. suit to declare the tax foreclosure judgment null and void.

It is the present Township Solicitor Duane R. Bell who is not defending this action in the U.S. Supreme Court, but a member of the firm, Kenneth W. Miller. Similarly, in 1976 charges of unethical conduct in the execution of the tax foreclosureproceeding were filed against George Friedman, Township Solicitor. Among other charges were the insertion of "owner unknown" and the publication of the 1962 tax foreclosure proceeding in the Salem Sunbeam instead of the Elmer Times, the official organ for Township matters and the locale of the property. Friedman resisted the charge by stating "the foreclosure proceeding was handled in my office by Norman Telsey (a member of the firm) who ordered the advertisement and he had no knowledge of the reason why the Salem Sunbeam was chosen." Action by a member of the firm was a shield for an

action which was his responsibility.

Appellant has filed an appeal with this Court which is his right under existing rules and Pittsgrove Township according to form, as in each of the three cases, has filed a motion to dismiss.

In the instant case Judge Philip Gruccio made no attempt to justify his ruling in dismissal under the doctrine of res judicata, except to state the same issues were before Judge Narrow therefore NJSA 2A: 14-1 six-year statute of limitations barred action. Judge Gruccio had before him the Hyland vs. Kirkman et al. case which held, when fraud is alleged, the statute begins to run when the fraud is discovered. What more did he need? He intended, and did grant dismissal regardless of existing law, which the Appellate Court and the New Jersey Supreme Court affirmed.

Pittsgrove Township now makes motion to dismiss on the ground (1) that this appeal does not present a substantial federal question; and (2) that the judgment of the Supreme Court of New Jersey rests on an adequate nonfederal basis.

Appellant has requested the U.S. Supreme Court to grant his right to due process guaranteed by the U. S. Constitution, and denied by New Jersey's enactment of two unconstitutional laws, the In REM TAX FORECLOSURE ACT (1948) and EXEMPT PROPERTY WHICH CEASES TO BE EXEMPT (1949); and a declaration by the Court that these laws are unconstitutional as denying a property owner's rights. These are substantial federal questions.

As to the judgment of the N. J. Supreme Court it failed to grant petition for certification, thereby evading any responsibility of properly deciding the case, and rested its decision on the previously noted unconstitutional enactments. For the U. S. Supreme Court to examine these laws as unconstitutional is clearly a federal prerogative, and requested by appellant in the Jurisdictional Statement.

The question before the Court is not whether the tort action barred by the statute of limitations presents a substantial federal question; or whether the six-year or twenty-

year statute should have applied -- but the greater question is appellant's right to due process in a fraudulent situation guaranteed by the U. S. Constitution which has been denied him by the New Jersey courts.

Two ancient cases have been cited, 1913 and 1892, as authority that appellant's appeal be dismissed. Without doubt the tenor of the Court's decisions has changed considerably in the meantime.

The ruling of res judicata in the instant case is purely an excuse for dismissal. The rulings throughout by Judge Narrow in Salem Superior Court, Law Div.; Judge John F. Gerry in U. S. District Court and by Judge Philip Gruccio in Chancery Div., have been based on the six-year statute of limitations dating from the 1962 foreclosure judgment which appellant knew nothing about. Pittsgrove Township has determined from the outset that the allegations of fraud would never be considered by any court, and yet the existing documents need no further corroboration.

The res, i.e. the nullifcation of the

tax foreclosure judgment has never been adjudicated in any case or court -- the parties to the fraudulent transaction were included in the tort action, but not in the instant case although the tax assessor was living at the time of filing; and the forums differed from Superior Court, Law Div., to Superior Court, Chancery Div.

Preston v. Chicago 33 S. Ct. 177(1913)

This case holds that the claims of a policeman who has been dropped from the pay rolls, that he was an officer of the classified service, and could not be summarily removed from office, without denying him due process of law, was not well founded, because, upon a proper construction of the state statutes, the officer was not in the classified service, and was therefore subject to removal, presents no Federal question which will sustain a writ of error from the Federal Supreme Court. (Underscoring added).

The state statutes in this case were not questioned as unconstitutional as in appellant's case and bears no relevance to the present appeal.

Northern Pac. R. Co. v. Ellis 12 S. Ct. 724 (1892)

This is a Wisconsin case to quiet title to land claimed under a deed from a county, given as an inducement for the location of a railroad. The trial court refused to receive

in evidence the record of a suit in the U.S. circuit court, commenced subsequently to the one in the state court, in which the identical question was involved. The state court held this proper on the ground that its decision as to the title of land was res judicata. Held, that a writ of error to the state supreme court would be dismissed, the judgment resting on a ground not involving a federal question. (Underscoring added)

These cases were purely state matters not involving the right to due process guaranteed by the U. S. Constitution and therefore non-federal.

77 Corpus Juris Secundum p. 274 and 275

Res judicata is used with different meanings in connection with different conditions, and not always with discrimination. "Res judicata" literally means a thing judicially acted on or decided; a thing or matter settled by judicial decision; a thing or matter which has been definitely and finally settled and determined on its merits by the decision of a court of competent jurisdiction. (Underscoring added)

Since Judge Joseph Narrow's letter-order (Appendix A1) has been the sole decision in this matter, by the granting of a motion for summary judgment filed by the Township, and and later adoted by a federal judge in a suit challenging the notice provisions of the In Rem Act as being unconstitutional in the Camden

U. S. District Court; and again cited by the Chancery judge in the instant case (Appendix A9) it is respectfully requested that this court examine these rulings carefully as to the doctrine of res judicata as being just.

CONCLUSION

It is respectfully requested that the motion to dismiss be denied; or action postponed until a hearing on the merits.

Respectfully submitted,

C. Newell Atkinson

Appellant pro se

CERTIFICATE OF SERVICE

C. Newell Atkinson, Appellant pro se, hereby certifies that on July 15, 1981 two copies of this brief in opposition to motion to dismiss were mailed first-class postage prepaid to Duane R. Bell, Esq., Pittsgrove Township Solicitor, 77 Market Street, Salem, N. J.

C. Newell Atkinson

Sworn before me
this 13th day of July 1981

Joyce A Sawle

JOYCE A. SAWLE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires AUG. 30 1984